

PETER M. SOUTHWORTH,  
Petitioner,  
  
vs.  
  
THE EIGHTH JUDICIAL DISTRICT)  
COURT OF THE STATE OF  
NEVADA IN AND FOR THE  
COUNTY OF CLARK, AND THE  
HONORABLE ROB BARE,  
DISTRICT COURT JUDGE,  
  
Respondents,  
  
AND  
  
LAS VEGAS PAVING  
CORPORATION,  
  
Real Parties in Interest.

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Real Parties in Interest.

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**RULE 26.1 DISCLOSURE STATEMENT**

I hereby certify that Real Party in Interest, LAS VEGAS PAVING CORPORATION does not have a parent corporation and that there are not parent corporations or publicly held companies that own more than 10% or more of any of the real party in interest's stock. Phillip R. Emerson of Emerson Law Group has appeared for NEVADA DIRECT INSURANCE COMPANY and no other attorneys are expected to appear on its behalf in this matter. These representations are made in order that the judges of this Court may evaluate possible disqualifications or recusal.

DATED this 17th day of October, 2017.

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**Other Authorities**

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**I.**

**STATEMENT OF THE ISSUES PRESENTED**

Is JCRCP 72B applicable to an appeal of a small claims justice court judgment subsequent to a party appealing and formally objecting to an initial small claims hearing findings?

In the alternative, did the district court correctly apply JCRCP 1 to its analysis of Real Party in Interest's appeal of the justice court judgment?

**II.**

**STATEMENT OF THE FACTS**

This is an action arising from a motor vehicle incident. Petitioner filed a small claims complaint in Las Vegas Justice Court on August 17, 2015. RA000001-3. A small claims hearing was heard on November 29, 2016, and on December 2, 2016, the Referee's Findings of Fact, Conclusions of Law and Recommendations was filed. RA000004-5. Petitioner then appealed the Referee's findings via a formal objection, which was filed December 7, 2016. RA000006. Subsequently, a Small Claims Notice to Appear for a Formal Objection Hearing was issued. RA000007.

Following the Formal Objection Hearing, the Small Claims Judgment was entered in Justice Court and filed on March 22, 2017. RA000008-12. Real Party in Interest's Notice of Appeal was then filed April 7, 2017. RA000013-19.

1 Thereafter, Petitioner filed a Motion to Dismiss Appeal on April 24, 2017.  
2  
3 RA000020-25. Real Party in Interest filed its opposition on May 19, 2017.  
4  
5 RA000026-41. Petitioner filed his reply in support of his motion to dismiss on  
6  
7 May 24, 2017. RA000042-57.

8 Following oral arguments before district court on June 1, 2017,  
9  
10 supplemental briefing was ordered and Real Party in Interest's supplemental brief  
11  
12 was filed June 1, 2017. RA000058-73. An errata to the supplemental opposition  
13  
14 was filed June 7, 2017. RA000074-83. Petitioner's reply to the supplemental  
15  
16 briefing was filed June 13, 2017. RA000084-99. Thereafter, district court issued a  
17  
18 minutes order on June 26, 2017, denying Petitioner's motion to dismiss appeal.  
19  
20 RA000100-101. A notice of entry of order denying Petitioner's motion to dismiss  
21  
22 appeal was subsequently filed August 11, 2017. RA000102-106.

### 23 III.

#### 24 SUMMARY OF THE ARGUMENT

25 In present matter, the Respondent District Court incorrectly applied JCRCP  
26  
27 98 rather than JCRCP 72B, as Real Party in Interest appealed a judgment entered  
28  
in Small Claims Justice Court, after Petitioner had appealed a referee's findings  
and conclusions at the original small claims hearing. As such, Real Party in  
Interest's Notice of Appeal was timely filed and Respondent District Court  
properly denied Petitioner's Motion to Dismiss Appeal.

1 In the alternative, the facts show JCRCP 98 and 72B are ambiguous, as  
2  
3 conceded by Respondent District Court and as exhibited by the vague description  
4 of the Civil Law Self Help Center website. As such, a literal application of Rule  
5 98 would invoke injustice and hardship upon Real Party in Interest. Accordingly,  
6  
7 Respondent District Court correctly applied JCRCP 1 in the interests of justice and  
8 in the state's interest of adjudicating this case on its merits.

#### 9 IV.

#### 10 LEGAL ARGUMENT

##### 11 **A. Real Party In Interest's Notice of Appeal Was Timely Under JCRCP** 12 **72B.**

13  
14 Petitioner asserts Respondent District Court was removed of subject matter  
15 jurisdiction over Real Party in Interest, *LAS VEGAS PAVING CORPORATION'S*  
16 (hereinafter "LVP") appeal of the small claims trial de novo. As such, Petitioner  
17 overlooks the fact that LVP opposed Petitioner's Motion to Dismiss Appeal on the  
18 basis that JCRCP 72B was applicable, not JCRCP 98, due to the fact that the  
19 underlying claim involved an appeal from Justice Court to District Court, allowing  
20  
21 20 days for appeal under JCRCP 72B. Yet, Petitioner fails to reference any  
22 specific, binding authority precluding Respondent District Court from applying  
23 JCRCP 1 to the issue of LVP's appeal from the justice court judgment.  
24  
25

26 In addition, JCRCP 1, in conjunction with this Court's established reasoning  
27 to have cases determined on its merits, favors a ruling affirming Respondent  
28



1 District Court's decision to deny Petitioner's Motion to Dismiss Appeal.  
2  
3 Specifically, an injustice unfairly prejudicing LVP arose out of the ambiguity  
4 between JCRCP 72B and JCRCP 98. Accordingly, Respondent District Court's  
5 application of JCRCP 1 was proper.  
6

7 **1. JCRCP 72B is applicable to this matter following the trial de novo in**  
8 **justice court.**

9 Under Nev. JCR. Civ. P. 72(a):

10 **(a) Filing the Notice of Appeal.** An appeal permitted  
11 by law from **a justice court to the district court** shall  
12 be taken by filing a notice of appeal with the clerk or  
13 justice of the justice court within the time allowed by  
Rule 72B. (Emphasis added).

14 In addition, under Nev. JCR. Civ. P. 72B(a):

15 **(a) Appeals in Civil Cases.** In a civil case in which  
16 an appeal is permitted by law **from a justice court to**  
17 **the district court the notice of appeal required by**  
18 **Rule 72(a) shall be filed with the clerk or justice of**  
19 **the justice court within 20 days of the date of service**  
20 **of written notice of the entry of the judgment** or order  
21 appealed from, except as otherwise provided by law.  
(Emphasis added).

22 In this case, a small claims hearing was held on November 29, 2016.  
23 Thereafter, a Referee's Findings of Fact, Conclusions of Law and  
24 Recommendations were entered on December 5, 2016. RA000004-5. Petitioner  
25 subsequently filed a timely appeal, in the form of a Formal Objection Notice,  
26 pursuant to JCRCP 98, which requires a notice of appeal within 5 days from the  
27  
28

1 entry of the judgment. RA000006. However, following the trial de novo, JCRC  
2 72B was applicable. This is further supported by the Civil Law Self-Help Center  
3 website “Appealing A Small Claims Judgment” page, in which the “Overview”  
4 subsection states, “Both the plaintiff and the defendant have five business days  
5 from the date the decision was filed (plus three calendar days if the decision was  
6 mailed) to **object or appeal** the decision.” RA000072, ¶ 1. (Emphasis added).  
7

8  
9 The decision referenced in the self-help center page is similar to the  
10 Referee’s Findings of Fact, Conclusions of Law and Recommendations, which  
11 were filed following the initial small claims hearing. In addition, the self-help  
12 page references a party’s right to “object or appeal,” which is precisely what  
13 Petitioner did following the initial small claims hearing before the small claims  
14 referee. RA000072. Following Petitioner’s appeal and formal objection, the case  
15 was heard before Justice Court Department IV and a trial de novo went forward in  
16 justice court on March 17, 2017. RA000007. Thereafter judgment was entered on  
17 March 24, 2017. RA000008-12.  
18  
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21 After the referee’s findings following the initial small claims hearing,  
22 Petitioner’s appeal or formal objection is appropriate under the five-day rule. *See*  
23 Nev. JCR. Civ. P. 98. Whereas here, Appellant’s Notice of Appeal was filed on  
24 April 7, 2017, well within 20 days of the date of service of the justice court’s entry  
25 of the judgment from the subsequent trial de novo. RA000013-19. Naturally, it  
26  
27  
28

1 follows that when LVP sought an appeal to district court of the justice court  
2 judgment following trial de novo, the language under JCRCP 72B was reasonably  
3 applicable, because LVP's appeal arose from the justice court trial and not the  
4 small claims hearing.  
5

6  
7 It is important to note that the Justice Court Rules of Civil Procedure are  
8 silent on formal objections in small claims matters. There being a lack of legal  
9 authority interpreting Rule 72B and 98, the self-help website provided guidance as  
10 to the applicable appellate procedure in small claims matters. As noted above, the  
11 self-help website advises a party has five days to object or appeal. RA000072.  
12 Being that Petitioner filed a formal objection following the small claims referee's  
13 findings, the five-day rule was appropriately applied to Petitioner's initial  
14 objection or appeal. However, after undergoing a trial de novo in justice court,  
15 LVP sought to appeal the justice court judgment to district court. As such, LVP's  
16 appeal is from justice court to district court, not from the small claims hearing.  
17 Thus, the 20 day rule, pursuant to JCRCP 72B applies.  
18  
19  
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21

22 **B. Respondent District Court Appropriately Applied JCRCP 1, Where**  
23 **the Literal Application of a Rule Would Work Hardship or Injustice,**  
24 **as in LVP's Appeal and Petitioner's Motion to Dismiss Appeal.**

25 Petitioner contends Respondent District Court inappropriately applied  
26 JCRCP 1 to its rationale and interpretation of JCRCP 72 and JCRCP 98. However,  
27 there is ambiguity and vagueness as to whether Rule 72B or 98 should apply  
28

1 regarding the time afforded to appeal a judgment. In fact, the Respondent District  
2 Court conceded there was procedural ambiguity as to the rules of civil procedure,  
3 “The Court further finds that the timeline to file the appeal in this case may have  
4 been ambiguous, given the procedure that occurred in the justice court small claims  
5 case.” RA000105, ll. 13-15. Given this ambiguity and potential injustice and  
6 hardship to LVP, Rule 1 was appropriately applied and Respondent District Court  
7 issued an order in the interests of justice.  
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10

11 **1. There is ambiguity in the application of JCRCP 72B or JCRCP 98 to**  
12 **a small claims trial de novo, specifically where a party had already**  
13 **filed a formal objection to the initial small claims hearing referee’s**  
14 **decision.**

15 In instances where a literal application of the rules would work hardship or  
16 injustice, Rule 1 requires the court to make orders in the interest of justice.

17 “Whenever it is made to appear to the court that a particular  
18 situation does not fall within any of these rules or that the literal  
19 application of a rule would work hardship or injustice in a  
20 particular situation, the court **shall** make such order as the  
interests of justice require.” Nev. JCRCP 1. (Emphasis added).

21 The basic purpose of small claims courts is to provide a less costly and protracted  
22 summary procedure for the litigation of claims not exceeding a specified, relatively  
23 low maximum amount. Thus, certain legal technicalities which may encumber an  
24 ordinary proceeding are generally dispensed with in a small claims proceeding.  
25 *Cheung v. Eighth Judicial Dist. Court of Nev.*, 121 Nev. 867, 869, 124 P.3d 550,  
26 552 (2005) (citing Nancy M. King, Annotation, *Small Claims: Jury Trials Rights*  
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1 in, and on Appeal From, Small Claims Court Proceeding, 70 A.L.R. 4th 1119,  
2 1121 (1989)).

3  
4 In the present matter, the ambiguity between Rule 72B and 98 gives rise to  
5 an injustice and hardship prejudicing LVP, especially if its appeal were dismissed  
6 on the basis of Rule 98. There is limited case law addressing this very issue.  
7 Moreover, there is also some confusion in the Civil Law Self-Help Center.  
8 Specifically, on the website under the sub-section “Appealing The Case” there is  
9 an explanation of “Step 2: Calculate your time limit to appeal,” in which it is stated  
10 that in order to appeal a judgment entered in Justice Court, a notice of appeal must  
11 be filed within twenty days. RA000067. In this case, LVP filed its notice of  
12 appeal of a judgment entered in **Justice Court**, and per the guidance offered in the  
13 self-help website, filed well within the twenty day requirement. (Emphasis added).  
14

15  
16 As noted above, there is also a section in the Civil Law Self-Help Center  
17 website for “Appealing A Small Claims Judgment.” The website explains that  
18 either party has five business days to object or appeal the decision. In this matter,  
19 Petitioner appealed the original small claims referee’s decision via an objection in  
20 December, 2016. RA000072. This demonstrates Petitioner’s subsequent appeal  
21 was an appeal of a judgment made in Justice Court, distinguishable from  
22 Respondent’s earlier appeal or objection from small claims court.  
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1 Overall, this demonstrates an ambiguity on the applicability of Rule 72B or  
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3 98. There is limited case law or guidance on the interpretation of Rule 72B and 98,  
4 along with how they apply to small claims matters such as this one: where  
5 Petitioner appealed or filed a formal objection of a small claims hearing and LVP  
6 subsequently appealed following a trial de novo in Justice Court. As such, LVP  
7 referenced the Civil Law Help Center website for guidance.  
8

9  
10 The Civil Law Help Center noted that an appeal or objection could be made  
11 within five days following a small claims judgment. It follows that the appeal of a  
12 small claims judgment had already occurred when Petitioner filed its formal  
13 objection to the small claims hearing referee's decision. As such, an appeal of a  
14 Justice Court judgment was appropriate. Thus, LVP filed its notice of appeal  
15 pursuant to Rule 72B.  
16

17  
18 **2. Although Respondent District Court ruled JCRCP 98 was applicable**  
19 **to LVP's appeal, it appropriately applied JCRCP 1, given the**  
20 **prejudice to LVP caused by the ambiguity of the rules, the minimal**  
21 **prejudice to Petitioner and the preferred rationale of deciding a case**  
22 **on its merits.**

23 The interests of justness and fairness are better served by permitting LVP's  
24 appeal to be heard on its merits. The issue before this Court is vague, as both  
25 JCRCP 72B and 98 fall within the purview of civil procedure rules in Justice  
26 Court. Moreover, and as noted above, the Civil Law Help Center website advises  
27 of the twenty day rule for appeals of judgments in Justice Court. RA000067. The  
28

1 website also adds to the ambiguity by advising readers that either party can appeal  
2 or **object** a small claims decision. RA000072. (Emphasis added). This is exactly  
3 what Petitioner did following the original hearing of this matter before Small  
4 Claims. When the matter was heard again at the trial de novo before Justice Court,  
5 Rule 72B appeared to be a natural and reasonable application.  
6

7  
8 As admitted by Petitioner, this not an issue that is commonly addressed  
9 before an appellate district court or before this Court on a petition for writ. Thus,  
10 there is a lack of established case law interpreting the distinction between the two  
11 rules. Further, under Rule 1: “Whenever it is made to appear to the court that a  
12 particular situation does not fall within any of these rules or **that the literal**  
13 **application of a rule would work hardship or injustice in a particular**  
14 **situation, the court shall make such order as the interests of justice require.”**  
15 (Emphasis added). Further, this Court must consider the state's underlying basic  
16 policy of deciding a case on the merits whenever possible. *Kahn v. Orme*, 108  
17 Nev. 510, 835 P.2d 790, 793 (1992). As a proper guide to the exercise of  
18 discretion, it is the basic underlying policy to have each case decided upon its  
19 merits. In the normal course of events, justice is best served by such a policy.  
20 *Hotel Last Frontier Corp. v. Frontier Properties*, 79 Nev. 150, 156, 380 P.2d 293,  
21 295 (1963).  
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1 Here, under Rule 98's application, LVP's Notice of Appeal was only two  
2 days tardy, which demonstrates a lack of prejudice to Petitioner. In addition, the  
3 lack of case law history establishing a clear interpretation of the rule and the added  
4 ambiguity in relying upon the self-help website resulted in an injustice or hardship  
5 prejudicing LVP. As such, the interests of justice would be served by hearing  
6 Petitioner's appeal on its merits and not disposing of it due to the ambiguity in the  
7 rules.  
8

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11 Petitioner cited to *Gladys Baker Olsen Family Trust, By & Through Olsen v.*  
12 *Olsen*, 109 Nev. 838, 858 P32d 385 (1993) (quoting *Thompson v. I.N.S.*, 375 U.S.  
13 385 (1964) (Clark, J. dissenting)), in arguing Respondent District Court  
14 inappropriately applied JCRCP 1 and that the justice court rules are inflexible in  
15 considering the timeliness of a notice to appeal. Yet, this rationale is contrary to  
16 the principles of this State's small claims tribunal. In addition, in *Olsen* this Court  
17 considered whether a non-party could intervene in an action after final judgment.  
18 This Court concluded the non-party in *Olsen* had never appropriately become a  
19 party to the suit.  
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23 This matter is distinguishable from *Olsen*, because LVP is clearly a party  
24 and the real party in interest. Further, LVP simply sought application of JCRCP 1  
25 in the determination of the timeliness and appropriateness of its appeal of the small  
26 claims justice court judgment. This is a far cry in comparison to the non-party's  
27  
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1 request in *Olsen*, in which it sought to be a party to an appeal after never having  
2 been a party to the underlying action.

4 Further, Petitioner also cited to *Culinary and Hotel Serv. Workers Union v.*  
5 *Haugen*, 76 Nev. 424, 357 P.2d 113 (1960). In *Haugen*, this Court addressed  
6 whether the trial court, by ex parte motion, could extend the time for a new trial.  
7 In *Haugen*, this Court held the District Court could not, by ex parte motion, extend  
8 the time for filing a new trial or for filing a notice of appeal, pursuant to NRC  
9 6(b).  
10

12 In its analysis, the Court in *Haugen* compared Rule 6(b) to its Federal  
13 counterpart and specifically noted that Rule 59(b) [motion for new trial] and 73(a)  
14 [notice of appeal] were among the deadlines the District Court was prohibited from  
15 extending. *Id.*, at 426-427. Nev. R. Civ. P. 6(b) reads, in pertinent part,  
16

17 “... the court for cause shown may at any time in its discretion  
18 (1) with or without motion or notice order the period enlarged  
19 ... but it may not extend the time for taking any action under  
20 Rules 50(b), 50(c)(2), 52(b), 59(b), (d) and (c) and 60(b),  
21 except to the extent and under the condition stated in them.”

22 As such, the Court in *Haugen* relied upon NRC 6(b) as a basis for precluding the  
23 district from enlarging time.

24 In the present matter, there is a justice court counterpart in Nev. JCR. Civ. P.  
25 6(b), which states:  
26

27 “... the court for cause shown may at any time in its discretion  
28 (1) with or without motion or notice order the period enlarged

1 ... but it may not extend the time for taking any action under  
2 Rules 50(b), 50(c)(2), 52(b), 59 (b), (d) and (e) and 60(b),  
3 except to the extent and under the conditions stated in them.”

4 However, unlike *Haugen*, the proceeding in question is not among those  
5 specifically precluded under JCRCP 6(b). More plainly, a notice of appeal under  
6 JCRCP 72B or 98 is not among the actions the court is prohibited from enlarging.  
7 Unlike *Haugen*, in this case there is no unambiguous rule prohibiting enlargement  
8 of the time to file a notice of appeal or prohibiting the Respondent District Court’s  
9 application of Rule 1. This matter is further distinguishable from *Haugen*, because  
10 there is no NRCP counterpart to JCRCP 1 requiring a court to issue an order in the  
11 interests of justice. It follows that Rule 1 and 6(b) were instituted with the intent of  
12 providing flexibility to the courts in small claims matters where legal technicalities  
13 should not encumber just proceedings. Accordingly, *Haugen* is distinguishable  
14 from this matter and the Respondent District Court was not precluded from  
15 applying Rule 1.  
16  
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20 In the present matter, this specific scenario appears to be the type  
21 contemplated in Rule 1. As noted above, an interpretation of Rules 72B and 98 is  
22 ambiguous. However, if this Court were to find Rule 98 were applicable, then the  
23 literal application of the rule would be contrary to this Court’s holding in *Cheung*,  
24 to dispense with certain legal technicalities that may encumber the small claims  
25  
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1 process. Accordingly, this Court should affirm Respondent District Court's  
2  
3 Decision to apply JCRCP 1 and deny Petitioner's Motion to Dismiss Appeal.

4 V.

5 **CONCLUSION**

6  
7 The District Court erred in applying JCRCP 98 rather than JCRCP 72B but  
8 did not err in denying Petitioner's Motion to Dismiss Appeal and appropriately  
9 applied JCRCP 1. Accordingly, LVP prays this Honorable Court affirm  
10 Respondent District Court's decision and deny Petitioner's Petition for Writ of  
11 Mandamus.  
12

13 DATED this 17<sup>th</sup> day of October, 2017.

14  
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**CERTIFICATE OF COMPLIANCE**

I hereby certify that I have read this Petition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, and in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I further certify that this brief complies with the formatting requirements of Rule 32(a)(4)-(6), and either the page-or type-volume limitations stated in Rule 32(a)(7). I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements on the Nevada Rules of Appellate Procedure.

DATED this 17<sup>th</sup> day of October, 2017.

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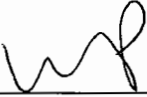
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**CERTIFICATE OF MAILING AND FACSIMILE**

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that service of the foregoing, **REAL PARTY IN INTEREST'S ANSWER BRIEF**, was made this 17<sup>th</sup> day of October, 2017, via facsimile, pursuant to EDCR Rule 7.26(a), and by depositing a true and correct copy of the same for first class mailing at Las Vegas, Nevada, addressed as follows:

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Respondent District Court Judge

  
\_\_\_\_\_  
An Employee of EMERSON LAW GROUP